

**STATEMENT OF  
CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS  
Before the Energy and Technology Committee  
Regarding Raised Bill No. 5271  
*An Act Concerning the Siting Council*  
March 1, 2012**

Cellco Partnership d/b/a Verizon Wireless ("Verizon") appreciates the thoughtful consideration of the Energy and Technology Committee, in general and Representative Lonnie Reed, in particular to improve upon the State's facility siting statutes. The provisions in Raised Bill No. 5271 ("Bill") will better facilitate each host municipality's involvement in the Siting Council review process and protect the integrity of the State's regulatory system.

The Bill would, among other things: (1) require the applicant to work more closely with the host municipality through its pre-application consultation process; (2) extend the municipal consultation process from 60 to 90 days to encourage greater municipal involvement in the tower siting process; (3) require an applicant to utilize the latest technological designs intended to minimize aesthetic and environmental impacts; (4) allow the Council to request that a civil action be brought against any party that has intentionally omitted or misrepresented a material fact during a proceeding; (5) provide for the further consideration of alternative sites proposed by a municipality; and (6) prohibit the Connecticut Siting Council ("Council") from permitting the siting of a wireless telecommunications tower within 250 feet of a school or commercial day care center unless the location is acceptable to the town's chief elected official or the Council finds that the facility will not have a substantial adverse effect on the aesthetics of the area where the schools or commercial day care facilities are located.

**Background:**

As the Energy and Technology Committee is acutely aware, the Council was established nearly forty years ago and is charged with reviewing and making decisions on applications for the siting of certain "facilities" defined in Section 16-50i(a) of the General Statutes. The "facilities" over which the Council has jurisdiction are limited to electric transmission lines, fuel transmission facilities, electric generating facilities, electric substations, CATV head-end facilities and telecommunications towers. The Council maintains exclusive jurisdiction over the siting of these facilities and its authority pre-empts local land use (e.g., zoning and inland wetlands) authority. Had the legislature not acted to empower the Siting Council and instead left that authority to a municipalities' local zoning and wetland authority, many of these important "facilities" of regional and state-wide significance might otherwise never be developed. Recognizing this, the legislature established the Council as the single State agency with the experience and skill set to facilitate local, regional, statewide and interstate planning for the appropriate siting of this critical communications infrastructure.

Although often making controversial decisions, the Council has done a remarkable job of balancing the public's need for these facilities and the important wireless services they help provide, against the environmental effects development of such facilities may have on our communities.

**Comments:**

Verizon continually strives to present to the Council the most comprehensive and environmentally sensitive applications possible to deliver optimal service to its customers. That said, we are mindful of the perspectives and concerns of the general public that have given rise to the Council "process" reforms. We would, however, continue to urge the same caution we have in the past about the Bill's potential for conflict with federal law, specifically related to those provisions that would prohibit the siting of wireless telecommunications facilities within a particular distance from schools and commercial daycare facilities under C.G.S. Section 16-50p(a)(3)(G).

While we appreciate the qualifying language that allows the Siting Council to approve a tower within these setback areas if it were deemed acceptable to the chief elected official of the municipality, or the Council finds that the facility location will not have a substantial adverse effect on the aesthetics or scenic quality of the neighborhood where the school or commercial day care facility is located, we believe it is important to acknowledge the language's potential conflict. We have attached a more detailed summary of our pre-emption concerns to this statement for your consideration.

Thank you for giving us the opportunity to offer our comments.

## **Discussion of Pre-Emption Concerns:**

In our experience, legislation that attempts to prohibit the siting of wireless telecommunications facilities within a particular distance from a specified use or set of uses is frequently based on the perceived health effects of radio frequency (“RF”) emissions. Federal law, as established in the Telecommunications Act of 1996, (“Telecommunications Act”) pre-empts such legislation. In particular, Section 704 of the Telecommunications Act, provides, in relevant part: “No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the [Federal Communication] Commission’s [FCC] regulations concerning such emissions.”

When seeking approval for telecommunications towers, applicants must provide the Council with the information necessary to determine whether or not a proposed facility will comply with the FCC’s standards regarding RF emissions. To the extent the proposed facility complies with those standards, the Council does not have the authority to deny an application on the basis of the putative effects of RF emissions. Similarly, because the Telecommunications Act bars states from regulating the placement of wireless service facilities on the basis of RF emissions, the legislature is pre-empted by federal law from instituting a blanket ban on the siting of wireless telecommunication towers within a defined area based on the perceived effects of RF emissions. While the qualifying language allows for the possible approval of an application under certain conditions, we believe it still could be construed as a ban.

To the extent the proposed legislation is intended to serve another purpose (e.g., to address aesthetic concerns), it still may be pre-empted by the Telecommunications Act. Specifically, Section 704 of the Telecommunications Act provides, in relevant part: “The regulation of the placement, construction and modification of personal wireless service facilities by any state or local government or instrumentality thereof . . . shall not prohibit or have the effect of prohibiting the provision of personal wireless services.” The proposed legislation could prohibit the Council from permitting the siting of a wireless telecommunications tower within 250 feet of a school or commercial day care center.

The terms “school” and “day care center” are defined very broadly in Connecticut General Statutes. As a consequence, the proposed legislation could have the effect of prohibiting the siting of a telecommunications tower within a large geographic area, an entire municipality or portions of several adjoining municipalities depending on the distance of each school or day care center. Such a prohibition or wireless service is pre-empted by the Telecommunications Act.